



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 6, 2003

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law & Police Section
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR2003-0079

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174493.

The City of Dallas Police Department (the "department") received a request for (1) a list of the "control numbers" for police brutality in the last three years, (2) copies of the corresponding "golden rod" sheets, and (3) internal affairs investigative files for complaints against a specified officer for the past five years. You have submitted information pertaining to one "control number." We presume that you have released any other information responsive to this request to the requestor. If you have not, you must do so at this time. *See* Gov't Code §§ 552.301, .302. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information is a completed internal affairs investigation. Section 552.022(a)(1) of the Government Code provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" is excepted from required public disclosure unless made confidential by other law. The entire investigation must therefore be released under section 552.022 unless the information is expressly made confidential under other law. Section 552.103, which excepts information relating to litigation is a discretionary exception under the Public Information Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision 473 (1987) (governmental body may waive section 552.103). Thus, the department may not withhold the submitted information under section 552.103 of the Government Code.

You claim, however, that some of the submitted information is confidential by law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

First, we note that the submitted information contains medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

This office has concluded that the protection afforded by section 159.002 extends only to records either created by a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the medical records that appear in the submitted documents. These documents are confidential under the MPA and may be released only in accordance therewith.

We next note that you have marked mental health records in the submitted information. Section 611.002 of the Health and Safety Code applies to "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." *See also* Health & Safety Code § 611.001 (defining "patient" and "professional"). We agree that the two pages you have marked as protected by section 611.002 may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

We note that we have also marked personal financial information that is confidential under section 552.101 in conjunction with common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has concluded that financial information concerning an individual is in some instances protected

by a common law right to privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that “all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.” Open Records Decision No. 373 at 3 (1983). You must withhold the personal financial information that we have marked.

Finally, we note that portions of the submitted information are excepted from public disclosure by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the information relating to the Texas driver’s licenses. You must also withhold the vehicle identification numbers and license plate number relating to a title or registration issued by the State of Texas under section 552.130. Information relating to an out-of-state title or registration may not be withheld under section 552.130.

In summary, the medical records we have marked may only be released in accordance with the MPA. The mental health records you have marked may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. You must withhold the private information which we have marked under section 552.101 of the Government Code. You must withhold all information relating to Texas driver’s licenses, and you must withhold the Texas license plate number and vehicle identification numbers under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer E. Berry".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 174493

Enc: Submitted documents

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